

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Bowen Analyst: Darrine Distefano Bill Number: SB 1822

Related Bills: SB 1016 (99/00) Telephone: 845-6458 Amended Date: 03-27-2000

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Employee Records/Prohibits Employers from Secretly Monitoring Employees  
E-Mail or Other Computer Records

### SUMMARY OF BILL

This bill would prohibit an employer from secretly monitoring the electronic mail or other computer records generated by an employee.

This bill would require that an employer that intends to inspect, review, or retain any electronic mail or any other computer records notify its employees of its electronic monitoring policies and practices. Also, it would require employees to sign a statement acknowledging that the employee has received, read, and understood the employer's electronic monitoring policies and practices.

### SUMMARY OF AMENDMENT

The March 27, 2000, amendments deleted the word "personal," therefore expanding the bill to apply to all electronic mail and computer records generated by an employee.

This is the department's first analysis of the bill.

### EFFECTIVE DATE

This bill would be effective January 1, 2001, and operative for all electronic mail monitoring policies and practices after that date.

### LEGISLATIVE HISTORY

SB 1016 (99/00, vetoed by the Governor for placing undue regulatory burdens and potential legal exposure on businesses) was similar to SB 1822.

### SPECIFIC FINDINGS

**Under current state law**, the California Public Records Act provides that any person may obtain a copy of any identifiable public record, except records exempt from disclosure, which includes personnel records.

Existing **state law** prohibits a state officer or employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. State law also requires state agencies to adopt rules governing the application of these laws and to notify state officers and employees upon their employment of the existence of these laws and their application to employees.

### Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

### Department Director

### Date

Gerald H. Goldberg

4/18/00

**State law** provides that the appointing powers shall determine, with approval from the department, those activities that are inconsistent, incompatible, or in conflict with the duties of a state officer or employee. These activities include using state time, facilities, equipment, or supplies for private gain or advantage.

In addition, due to the nature of the confidential services provided by the Franchise Tax Board (FTB), the department has established additional rules of conduct that the department's officers and employees are required to follow. An employee that fails to follow these rules is subject to adverse action relating to their continued employment. These rules of conduct specify that among other activities, a state officer or employee shall not:

- Ⓟ Willfully fail to comply with the income tax laws of the state.
- Ⓟ Disclose confidential information, in writing, electronically or verbally to unauthorized individuals.
- Ⓟ Access, request, acquire or examine confidential tax or non-tax records, including personal information, unless there is an official need to know.
- Ⓟ Audit, adjust, or collect accounts of family members or friends.
- Ⓟ Audit or investigate a person with whom he or she has a business or personal relationship.
- Ⓟ Intentionally misuse departmental data processing, word processing, or other equipment, facilities, or programs for personal use or in a way that will compromise the effectiveness or adversely impact any program administered by the department.

The department also has established a policy regarding the use of email and the Internet. It is unacceptable for FTB employees to use email and the Internet for any unauthorized disclosure of confidential or proprietary information; for any private or personal business gain; for any illegal purpose; or for transmitting threatening, obscene or harassing messages.

**This bill** would prohibit an employer from secretly monitoring the electronic mail or any computer records generated by an employee. This bill would define "secretly monitor" as to inspect, review, or retain electronic mail or other computer records in a manner that does not comply with the policies and practices that are disclosed to the employee.

**This bill** would require that an employer who intends to inspect, review, or retain any electronic mail or any other computer records to notify its employees of its workplace privacy and electronic monitoring policies and practices. Notification is required upon commencement of employment for new employees or by March 1, 2001, for existing employees. The employer may provide notification by presenting the policies and practices in hard copy or by electronic mail.

**This bill** also would require employees to sign a statement acknowledging that he or she has read, understood, and acknowledged receipt of the employer's electronic monitoring policies and practices.

If an affected employee refuses to sign or electronically verify that he or she has read, understood, and acknowledged receipt of the employer's electronic monitoring policies and practices, the employer may comply with the requirements of this bill by having the person who provided the employee with the employer's policies and practices sign and retain a statement to that effect and provide a copy of that statement to the affected employee.

In addition, **this bill** would require that the workplace privacy and electronic monitoring policies and practices include an employee's right, pursuant to Labor Code Section 1198.5, to review any data collected by employer monitoring and the right to dispute and have inaccurate data corrected or deleted. Labor Code Section 1198.5 does not apply to the state and state agencies. Thus, an employee of the state or a state agency would not have this right, and this provision is not applicable to the department. FTB employees have the right to inspect their personnel records and to dispute any inaccurate data in those records under the bargaining unit contracts for state employees.

#### Implementation Considerations

Implementation of the bill would not significantly impact the department.

#### FISCAL IMPACT

##### Departmental Costs

This bill would not impact the department's costs.

##### Tax Revenue Discussion

This bill would not impact the state's income tax revenue.

#### BOARD POSITION

Pending.